



U.S Department
of Transportation

**Federal Aviation
Administration**

Western-Pacific Region
Airports Division

P.O. Box 92007
Worldway Postal Center
Los Angeles, CA 90009

November 27, 2006

Brian Sekiguchi
Deputy Director - Airports
State of Hawaii, Department of Transportation
400 Rodgers Blvd, Suite 700
Honolulu, HI 96819-1880

Dear Mr. Sekiguchi:

In accordance with section 158.29 of the Federal Aviation Regulations (Title 14, Code of Federal Regulations, Part 158), the Federal Aviation Administration (FAA) has approved your application numbers 06-02-C-00-HNL, 06-02-C-00-OGG, 06-02-C-00-KOA, 06-02-C-00-LIH, and 06-01-C-00-ITO to impose a Passenger Facility Charge (PFC) at Honolulu International (HNL), Kahului (OGG), Kona International (KOA), Lihue (LIH), and Hilo International (ITO) airports for use at HNL. The authority to impose a PFC is contingent on your continued compliance with the terms of the regulation and other conditions included in this letter.

Enclosed is a Final Agency Decision which provides specific information about this approval including the approved PFC level, total amount of approved net PFC revenue to be collected, earliest charge effective date, and duration of authority to impose the PFC. This Decision also includes information on the approved projects as well as the FAA's reasons for its decision. The FAA's findings and determinations required by statute and Part 158 are also included in the Decision.

The FAA has approved PFC collection and use of PFC revenue at HNL on six projects. The total approved PFC revenue to be collected for these projects is \$104,458,000.

We wish to point out a potential conflict between the definition of airport revenue which may be proposed in general airport revenue bonds and conditions contained in your PFC approval. Specifically, bond resolutions may define pledged airport revenue in broad terms which may be interpreted to include PFC revenues. New bond issues should clarify that use of PFC revenues is limited to the allowable costs of approved PFC projects. The terms of PFC approval do not permit the use of PFC revenues to pay debt service on any new or outstanding bonds issued to finance other than approved PFC projects.

Reporting, record keeping, and auditing requirements are specified in Part 158, Subpart D. Please issue your required quarterly reports in accordance with the previously provided guidance. We request that you advise our Honolulu Airports District Office when you notify the air carriers and foreign air carriers to begin collecting PFC's. Please coordinate construction proposals with the appropriate federal offices as you would with any nonfederally funded construction.

You are required to implement your projects approved for concurrent impose and use authority within 2 years of this date. Section 158.33(a)(1) requires the public agency to begin implementation of a project no later than 2 years after receiving approval to use PFC revenue on that project.

We have enclosed the list of FAA Advisory Circulars with which you must comply in accordance with your Certification of Assurance Number 9, Standards and Specifications.

Sincerely,

ORIGINAL SIGNED BY

Mark A. McClardy
Manager, Airports Division

Enclosures

FINAL AGENCY DECISION

STATE OF HAWAII HONOLULU, HAWAII

Application numbers 06-02-C-00-HNL, 06-02-C-00-OGG, 06-02-C-00-KOA, 06-02-C-00-LIH, and 06-01-C-00-ITO to impose a passenger facility charge (PFC) at Honolulu International Airport (HNL), Kahului Airport (OGG), Kona International at Keahole Airport (KOA), Lihue Airport (LIH), and Hilo International Airport (ITO) for use at HNL.

In accordance with §158.29 of the Federal Aviation Regulations (Title 14, Code of Federal Regulations, Part 158), this Final Agency Decision includes all appropriate determinations to approve or disapprove, in whole or in part, imposition of a PFC at HNL, OGG, KOA, LIH and ITO and use of PFC revenue on six projects at HNL.

Procedural History (Dates)

Public Comment Notice:	March 15, 2006
Air carrier consultation meeting:	April 26, 2006
Federal Aviation Administration (FAA) application receipt:	August 2, 2006
FAA finding that application is substantially complete:	August 31, 2006

SUMMARY OF APPROVED COLLECTIONS FOR THE STATE OF HAWAII

<u>Application Number</u>	<u>Approved for Collection</u>	<u>Approved for Use</u>
04-01-C-00-***	42,632,466	42,632,466
06-02-C-00-***	\$104,458,000	\$104,458,000
Total	\$147,090,466	\$147,090,466

This application (06-02-C-00-***) applies to each of the state of Hawaii's (State) five airports imposing PFC's. The State's intent is to collect a pro-rata share of the total approved amount at each imposing airport, HNL, OGG, KOA, LIH, and ITO. Based on the State's estimate of collections at each of the five airports, the FAA estimates that HNL will collect approximately 74.7 percent of the total approved amount, OGG will collect approximately 15.3 percent, KOA will collect approximately 6.0 percent, LIH will collect approximately 3.2 percent, and ITO will collect approximately 0.8 percent.

INFORMATION REGARDING EACH AIRPORT

Application to Collect a PFC at HNL and Use at HNL

PFC Level, Amount and Charge Effective Date

Level of PFC:	\$3.00
Total approved net PFC revenue approved for collection at HNL in this decision:	\$78,050,000
Earliest charge effective date:	February 1, 2007

February 1, 2007 is the "earliest" charge effective date and is based upon the estimated charge expiration date for the previously approved collections in application no. 04-01-C-00-HNL. If the State changes the charge expiration date for the previous application, the charge effective date for this application will also change, so that the State can continue to collect the authorized amount of PFC revenue without a cessation in collections. Section 158.43(c) contains information regarding notification to air carriers and foreign air carriers of the charge effective date and changes to the charge expiration date. In establishing its charge effective date, the public agency must comply with §158.43(b)(3) which states, in part, that the charge

effective date will be the first day of a month which is at least 60 days from the date the public agency notifies the carriers of approval to impose the PFC.

Duration of Authority

The State is authorized to impose a PFC at HNL until the date on which the total net PFC revenue collected plus interest thereon equals the allowable cost of the approved projects or the charge expiration date is reached, whichever comes first. Based on information submitted by the State, the FAA estimates the charge expiration date to be July 1, 2011. If the State's authority to impose a PFC ceases, the public agency must, without delay, submit a plan acceptable to the FAA to ensure that it complies with applicable law, subject to loss of Airport Improvement Program (AIP) grant funds, Section 158.39(d).

DECISION SUMMARY TABLE

<u>Application Number</u>	<u>Approved for Collection</u>	<u>Approved for Use</u>
04-01-C-00-HNL	\$32,296,466	\$32,296,466
06-02-C-00-HNL	78,050,000	78,050,000
Total	\$110,346,466	\$110,346,466

Application to Collect a PFC at OGG and Use at HNL

PFC Level, Amount and Charge Effective Date

Level of PFC:	\$3.00
Total approved net PFC revenue approved for collection at OGG in this decision:	\$16,000,000
Earliest charge effective date:	February 1, 2007

February 1, 2007 is the "earliest" charge effective date and is based upon the estimated charge expiration date for the previously approved collections in application no. 04-01-C-00-OGG. If the State changes the charge expiration date for the previous application, the charge effective date for this application will also change, so that the State can continue to collect the authorized amount of PFC revenue without a cessation in collections. Section 158.43(c) contains information regarding notification to air carriers and foreign air carriers of the charge effective date and changes to the charge expiration date. In establishing its charge effective date, the public agency must comply with §158.43(b)(3) which states, in part, that the charge effective date will be the first day of a month which is at least 60 days from the date the public agency notifies the carriers of approval to impose the PFC.

Duration of Authority

The State is authorized to impose a PFC at OGG until the date on which the total net PFC revenue collected plus interest thereon equals the allowable cost of the approved projects or the charge expiration date is reached, whichever comes first. Based on information submitted by the State, the FAA estimates the charge expiration date to be July 1, 2011. If the State's authority to impose a PFC ceases, the public agency must, without delay, submit a plan acceptable to the FAA to ensure that it complies with applicable law, subject to loss of AIP grant funds, Section 158.39(d).

DECISION SUMMARY TABLE

<u>Application Number</u>	<u>Approved for Collection</u>	<u>Approved for Use</u>
04-01-C-00-OGG	\$8,950,000	\$8,950,000
06-02-C-00-OGG	16,000,000	16,000,000
Total	\$24,000,000	\$24,950,000

Application to Collect a PFC at KOA and use at HNL**PFC Level, Amount and Charge Effective Date**

Level of PFC:	\$3.00
Total approved net PFC revenue approved for collection at KOA in this decision:	\$6,281,000
Earliest charge effective date:	February 1, 2007

February 1, 2007 is the "earliest" charge effective date and is based upon the estimated charge expiration date for the previously approved collections in application no. 04-01-C-00-KOA. If the State changes the charge expiration date for the previous application, the charge effective date for this application will also change, so that the State can continue to collect the authorized amount of PFC revenue without a cessation in collections. Section 158.43(c) contains information regarding notification to air carriers and foreign air carriers of the charge effective date and changes to the charge expiration date. In establishing its charge effective date, the public agency must comply with 158.43(b)(3) which states, in part, that the charge effective date will be the first day of a month which is at least 60 days from the date the public agency notifies the carriers of approval to impose the PFC.

Duration of Authority

The State is authorized to impose a PFC at KOA until the date on which the total net PFC revenue collected plus interest thereon equals the allowable cost of the approved projects or the charge expiration date is reached, whichever comes first. Based on information submitted by the State, the FAA estimates the charge expiration date to be July 1, 2011. If the State's authority to impose a PFC ceases, the public agency must, without delay, submit a plan acceptable to the FAA to ensure that it complies with applicable law, subject to loss of AIP grant funds, Section 158.39(d).

DECISION SUMMARY TABLE

<u>Application Number</u>	<u>Approved for Collection</u>	<u>Approved for Use</u>
04-01-C-00-KOA	\$1,065,000	\$1,065,000
06-02-C-00-KOA	6,281,000	6,281,000
Total	\$7,346,000	\$7,346,000

Application to Collect a PFC at LIH and Use at HNL

PFC Level, Amount and Charge Effective Date

Level of PFC:	\$3.00
Total approved net PFC revenue approved for collection at LIH in this decision:	\$3,346,000
Earliest charge effective date:	February 1, 2007

February 1, 2007 is the "earliest" charge effective date and is based upon the estimated charge expiration date for the previously approved collections in application no. 04-01-C-00-LIH. If the State changes the charge expiration date for the previous application, the charge effective date for this application will also change, so that the State can continue to collect the authorized amount of PFC revenue without a cessation in collections. Section 158.43(c) contains information regarding notification to air carriers and foreign air carriers of the charge effective date and changes to the charge expiration date. In establishing its charge effective date, the public agency must comply with §158.43(b)(3) which states, in part, that the charge effective date will be the first day of a month which is at least 60 days from the date the public agency notifies the carriers of approval to impose the PFC.

Duration of Authority

The State is authorized to impose a PFC at LIH until the date on which the total net PFC revenue collected plus interest thereon equals the allowable cost of the approved projects or the charge expiration date is reached, whichever comes first. Based on information submitted by the State, the FAA estimates the charge expiration date to be July 1, 2011. If the State's authority to impose a PFC ceases, the public agency must, without delay, submit a plan acceptable to the FAA to ensure that it complies with applicable law, subject to loss of AIP grant funds, Section 158.39(d).

DECISION SUMMARY TABLE

<u>Application Number</u>	<u>Approved for Collection</u>	<u>Approved for Use</u>
04-01-C-00-LIH	\$321,000	\$321,000
06-02-C-00-LIH	3,346,000	3,346,000
Total	\$3,667,000	\$3,667,000

Application to Collect a PFC at ITO and Use at HNL

PFC Level, Amount and Charge Effective Date

Level of PFC:	\$3.00
Total approved net PFC revenue approved for collection at ITO in this decision:	\$781,000
Earliest charge effective date:	February 1, 2007

February 1, 2007 is the "earliest" charge effective date. In establishing its charge effective date, the State must comply with §158.43(b)(3) which states, in part, that the charge effective date will be the first day of a month which is at least 60 days from the date the public agency notifies the carriers of approval to impose the PFC.

Duration of Authority

The State is authorized to impose a PFC at ITO until the date on which the total net PFC revenue collected plus interest thereon equals the allowable cost of the approved projects or the charge expiration date is reached, whichever comes first. Based on information submitted by the State, the FAA estimates the charge expiration date to be July 1, 2011. If the State's authority to impose a PFC ceases, the public agency must, without delay, submit a plan acceptable to the FAA to ensure that it complies with applicable law, subject to loss of AIP grant funds, Section 158.39(d).

DECISION SUMMARY TABLE

<u>Application Number</u>	<u>Approved for Collection</u>	<u>Approved for Use</u>
06-01-C-00-ITO	\$781,000	\$781,000
Total	\$781,000	\$781,000

Project Approval Determinations

For the projects approved in this Final Agency Decision and for each application as a whole, the FAA made the following determinations:

- The amount and duration of the PFC will not result in revenue that exceeds the amount necessary to finance the projects.
- The approved projects meet at least one of the objectives set forth in §158.15(a); and is eligible in accordance with §158.15(b) and is adequately justified in accordance with §158.15(c) and paragraph 4-8 of FAA Order 5500.1, Passenger Facility Charge (August 9, 2001).
- All project-related requirements pertaining to the airport layout plan and airspace studies have been met. Environmental requirements (§158.29(b)(1)(iv)) are discussed under a separate heading below.
- The collection process, including a request by the public agency not to require a class or classes of carrier to collect PFC, is reasonable, not arbitrary, nondiscriminatory, and otherwise in compliance with the law.
- The public agency has not been found to be in violation of §9304(e) or §9307 of the Airport Noise and Capacity Act (ANCA) of 1990 (since codified as 49 U.S.C. 47524 and 47526).

Projects Approved for Authority to Impose a PFC at HNL, OGG, KOA, LIH and ITO and Use PFC Revenue at HNL at a \$3.00 Level**Description:**

**Aircraft Rescue and Fire Fighting (ARFF)
Facilities Improvements**

Approved Amount

\$4,600,000

This project will provide for the construction of various improvements to the existing Aircraft Rescue and Fire Fighting (ARFF) station to be capable of serving current and future commercial aircraft operations. The project will include construction of new larger enclosures for the airport ARFF vehicles, equipment storage area, alarm/control room, emergency generator area, fire training facilities, site pavement, and associated construction management

services. The existing ARFF facilities are over 30 years old and not adequate to accommodate the size of the four newer ARFF vehicles serving the airport. The project is necessary to allow full time aircraft rescue and firefighting coverage at HNL and to meet Part 139 safety/certification requirements.

Determination:

Approved for collection and use.

PFC objective: Enhance safety.

Basis for eligibility: Paragraph 547b of FAA Order 5100.38C, AIP Handbook, (June 28, 2005).

Estimated total project cost: \$4,600,000.

Proposed sources of financing: PFC revenue.

PFC funds break-out: HNL \$3,437,075; OGG \$704,590; KOA \$276,595; LIH \$147,347; ITO \$34,393.

Elevator and Escalator Improvements

\$19,400,000

This project provides for the installation of 21 elevators and 39 escalators and related improvements serving the overseas and inter-island terminals. The project will replace the elevators and escalators, which are approximately 20 years and older and have outlived their useful lives. Equipment failure is becoming a more frequent occurrence and key components of the equipment are scarce and obsolete. These facilities provide passenger access between the ground, second, and third levels to the airline ticket counters, boarding gate areas, and baggage claim areas. Installation of new elevators and escalators is necessary to serve non-revenue common-use terminal areas. The project will facilitate passengers' movement and allow HNL to comply with the Americans with Disabilities Act and emergency access requirements.

Determination:

Approved for collection and use.

PFC objective: Preserve capacity.

Basis for eligibility: Paragraphs 601, 605, and 611 of FAA Order 5100.38C, AIP Handbook, (June 28, 2005).

Estimated total project cost: \$19,400,000

Proposed sources of financing: PFC revenue.

PFC funds break-out: HNL \$14,495,491; OGG \$2,971,529; KOA \$1,166,511; LIH \$621,421; ITO \$145,048.

Loading Bridge Replacement

\$14,000,000

This project provides for the installation of 14 new passenger-loading bridges to replace the existing bridges at the boarding gates of the overseas terminals and related improvements to the common-use boarding areas. The existing loading bridges are in the range of 16 to 30 years old and have exceeded their useful life. Replacement of the aged, deteriorating passenger loading bridges is necessary to accommodate the increased number of airline passengers and passengers with disabilities.

Determination:

Approved for collection and use.

PFC objective: Preserve capacity.

Basis for eligibility: Paragraphs 601 and 605 FAA Order 5100.38C, AIP Handbook, (June 28, 2005).

Estimated total project cost: \$14,000,000.

Proposed sources of financing: PFC revenue.

PFC funds break-out: HNL \$10,460,664; OGG \$2,144,402; KOA \$841,812; LIH \$448,448; ITO \$104,674.

International Arrivals Building Ceiling Replacement**\$32,258,000**

This project provides for the replacement of ceiling areas (approximately 155,000 square feet) in the international arrivals terminal building and other related improvements. This project will remove and replace deteriorated ceiling areas containing asbestos materials. The ceiling has been in place for nearly 30 years. The ceiling common-use areas have been damaged and stained from many years of leaks caused by deteriorated drain lines and roof leaks. This project will address health and safety issues caused by damage to ceiling materials containing asbestos. The project is necessary to prevent further deterioration to the terminal structure, preserve the terminal capacity, and protect the traveling public and equipment.

Determination:

Approved for collection and use.

PFC objective: Preserve safety and capacity.

Basis for eligibility: Paragraphs 601 and 611 of FAA Order 5100.38C, AIP Handbook, (June 28, 2005). Costs of terminal improvements have been limited to eligible non-revenue producing passenger and baggage movement areas.

Estimated total project cost: \$36,385,750.

Proposed sources of financing: PFC revenue, existing AIP 3-15-0005-80 grant, and local Funds.

PFC funds break-out: HNL \$24,102,863; OGG \$4,941,010; KOA \$1,939,655; LIH \$1,033,289; ITO \$241,183.

Air Conditioning System Improvements, Phase II**\$33,600,000**

This project provides for the second phase of replacing and upgrading of the chiller plants in the overseas terminal and other improvements related to the air conditioning system. The first phase of this project was funded under the previously approved application. The airport chiller plants in the Overseas Terminal and other terminals (Diamond Head and the Ewa Concourses) are nearly 30 years old, under capacity, and are approaching the end of their useful lives. The installation of a connecting loop from the Overseas Terminal chiller plant to the Diamond Head and Ewa concourse chiller plants is being completed. Replacement of the connecting loop will eliminate the need for all three chiller plants to run at all times to service each of the three separate areas. Currently, if any chiller plant were to malfunction and subsequently shut-off, its corresponding service area would be without air conditioning. With installation of the new chiller plants system, all areas of the airport will be provided with air conditioning in the event of any malfunction in any one of the three chiller plants. Upgrading the existing air conditioning system will provide approximately 15 percent in operating cost savings. During low use periods, two of the three chiller plants would be able to be shut-off while still maintaining chilled air for the three areas. In addition, performing maintenance would be easier since shutting off a chiller plant would not mean shutting off air conditioning in that area. The project is necessary to prevent potential system failure and maintain current building capacity. The new system will make the air conditioning system more energy efficient and improve passenger comfort.

Determinations:

Approved for collection and use.

PFC objective: Preserve capacity.

Basis for eligibility: Paragraphs 601, 604, and 609 of FAA Order 5100.38C, AIP Handbook, (June 28, 2005). Costs of terminal improvements have been limited to eligible passenger movement areas.

Estimated total project cost: \$36,510,000.

Proposed sources of financing: PFC revenue and revenue bonds.

PFC funds break-out: HNL \$25,105,593; OGG \$5,146,566; KOA \$2,020,349; LIH \$1,076,276; ITO \$251,216.

PFC Administrative Costs**\$600,000**

This project provides for reimbursements of allowable costs associated with the administration and professional fees for services rendered from preparation of the PFC applications and associated program requirements. This includes the handling of PFC revenue, financial reporting and audit requirements, outside consultants, auditors, airport accounting and engineering staff.

Determination:

Approved for collection and use.

PFC objective: Preserve capacity.

Basis for eligibility: Section 158.3, definition of "allowable costs", and Paragraph 310c of FAA Order 5100.38C, AIP Handbook, (June 28, 2005).

Estimated total project cost: \$600,000.

Proposed sources of financing: PFC revenue.

PFC funds break-out: HNL \$448,314; OGG \$91,903; KOA \$36,078; LIH \$19,219; ITO \$4,486.

Environmental Requirements

The projects approved in this application for concurrent authority to impose and use the PFC were examined under the guidelines contained in FAA Order 5050.4B, *National Environmental Policy Act (NEPA) Implementing Instructions for Airport Projects (April 28, 2006)* and each project has been determined to be categorically excluded from the requirement for formal environmental review. There appear to be no extraordinary circumstances requiring further review.

Request Not to Require a Class or Classes of Carriers to Collect PFC's

The state of Hawaii did not request that a class or classes of carriers be excluded from the requirement to collect PFC's at any of the five collecting airports.

Determination: No FAA action required. The FAA notes that, in accordance with section 158.9(4), no public agency may impose a PFC on any passenger on flights, including flight segments, between two or more points in Hawaii.

Compliance with the Airport Noise and Capacity Act of 1990 (ANCA)

The FAA is not aware of any proposal at HNL, OGG, KOA, LIH and ITO which would be found to be in violation of the ANCA. The FAA herein provides notice to the state of Hawaii that a restriction on the operation of aircraft at these five airports must comply with all applicable provisions of the ANCA and that failure to comply with the ANCA and Part 161 makes the Airport Authority subject to provisions of Subpart F of that Part. Subpart F, "Failure to Comply with This Part," describes the procedures to terminate eligibility for AIP funds and authority to collect PFC revenues.

Compliance with Subsection 47107(b) Governing Use of Airport Revenue

As of the date of this approval, the state of Hawaii has not been found to be in violation of 49 U.S.C. 47107(b) or in violation of grant assurances made under 49 U.S.C. 47107(b).

Air Carrier Consultation Comments

Continental Airlines, Island Air, and Pacific Wings Airlines submitted certifications of agreement/disagreement in response to the state of Hawaii's consultation with the air carriers regarding this PFC application. Continental Airlines and Island Air certified agreement with all of the proposed projects. Pacific Wings certified disagreement with all of the projects. Representatives from only five of the 30 air carriers that received the air carrier consultation meeting notification attended the meeting. The air carriers who attended the air carrier consultation meeting were Air New Zealand, Eva Airways, Island Air, Pacific Wings, and Philippine Airlines. The FAA considered all comments during its deliberations on this application.

Pacific Wings' comments, the HDOTA's response and the FAA's conclusions are discussed below.

1. Federal Funding is contingent on assurances and must comply with federal mandates.

Pacific Wings believes that all federally assisted airports are bound by federal grant assurances that require the airport operator to accommodate reasonable requests for access by new or existing air carriers; without unjust discrimination; subject air carriers to comparable charges; and not give exclusive rights to any person.

HDOTA's response to the air carrier comments provided in Attachment B stated that HDOTA believes this comment does not address any aspect of any specific project included in this PFC application package. Therefore, the state of Hawaii is unable to respond to a particular technical objection the air carrier has cited against any of the individual projects related to or as cited in, FAA PFC Order 5500.1, (dated August 9, 2001) Section 4-6 (Project Eligibility), Section 4-7 (Project Objective), or Section 4-8 (Project Justification).

The FAA notes Pacific Wings' objection refers to the federal grant assurances not the PFC assurances. The FAA concurs with HDOTA's response regarding the relation of the carrier comment to project technical specificity. The FAA will not respond to issues specific to the federal grant program which are not also applicable to the PFC program in a PFC Final Agency Decision.

2. The application is deficient and incomplete.

Pacific Wings believes that the public agency is required in its justification for a terminal development project, including gates and related areas, to discuss any existing conditions that limit competition between or among air carriers at the airport (Title 14 CFR 158.25(b)(7)). The public agency's application includes \$14 million for replacement of gate loading bridges and related improvements.

HDOTA's response to this carrier comment provided in Attachment B stated that the project, loading bridge replacement, is specifically to replace existing loading bridges at the boarding gates located in the Diamond Head and Ewa Concourses of the overseas terminal. All gates in the overseas terminal are "common use" gates, not "exclusive use." The loading bridge replacement project is only one phase of a planned replacement of old and deteriorated loading bridges at HNL. In addition, this comment does not address any issues related to the scope of the loading bridge replacement project. Therefore, the state of Hawaii is unable to respond to a particular technical objection the air carrier has cited against any of the individual projects related to, or as cited in, FAA PFC Order 5500.1, (dated August 9, 2001) Section 4-6 (Project Eligibility), Section 4-7 (Project Objective), or Section 4-8 (Project Justification).

The FAA notes the replacement of the loading bridges does not fall under the new construction, rehabilitation or demolition criteria that would require a public agency to address competition issues, FAA PFC Order 5500.1, Section 4-7d (Project Objective, Competition). The FAA concurs with HDOTA's response regarding the relation of the carrier comment to project technical specificity. Therefore, the FAA determined that the projects met the eligibility requirements of §158.15 and FAA PFC Order 5500.1, Section 4-6 (Project Eligibility).

3. The public agency is not eligible for PFC funding as set forth in statutory and regulatory eligibility criteria.

Pacific Wings argues the public agency agreed to participate in a series of joint compliance task force meetings with the FAA, Part 135 Regulated Operator's Partnership, and interested air carriers. The purpose of this initiative was to: 1) identify and address chronic non-compliance issues involving Hawaii's airports; 2) develop and implement a schedule of events necessary to bring Hawaii's airports into compliance; and, 3) provide cognizant federal officials with real-time disclosures and documented evidence of non-compliance, supported by official government records. Between May 2005 and March 2006, the task force identified and documented certain practices and behaviors that appeared contrary to pro-competitive purposes of the exclusive rights prohibition, have anticompetitive implications inconsistent with the anti-discrimination assurance, and undermined the goals of the Airline Deregulation Act to foster competition and encourage new entry into air transportation markets. Additional Pacific Wings complaints are listed below:

- Land use, property management and leasing practices which discriminate among and between classes of air carriers, and penalize new entrants with fees as much as 60 percent higher than similarly situated incumbents.
- Unreasonable airport terms, standards, conditions and practices which limit and hinder access by small air carriers and the public to essential facilities and protect incumbents from competitive encroachment.

- Direct and constructive grants of an exclusive right to dominant airlines, at the expense of new entrants and small air carriers serving rural and remote communities.
- Economic regulation of air carriers; including specific management decisions and practices that have resulted in levying of certain taxes and fees on the public, which small air carriers are not required to impose under federal law.
- Diversion of airport revenues to lobbyists, lawyers and consultants representing dominant air carriers; and use of those revenues to lobby influential members of the Hawaii Legislature deciding matters related to the state Department of Transportation and its airports.
- Shifting of costs from private companies doing business with the airport public agency taxpayers, despite specific federal regulations, which appear to place those financial burdens on airport users.
- Failure to adhere to established rate setting methodologies or to maintain a schedule of charges for use of facilities and services that will make the airport as self-sustaining as possible.
- Deferral to dominant, incumbent air carrier determinations on whether or not – and how – to accommodate new entrants or competitor expansion; as well as lease and management practices which effectively cede control over airport facilities to dominant air carriers.
- Abuse of proprietary powers, including unreasonable and discriminatory treatment of small air carriers and unduly burdensome regulation which serves no legitimate state objective and conflicts with the Federal Aviation Act, as amended by the Airline Deregulation Act. Despite well-documented efforts by airport users to facilitate resolution, the public agency has failed to take timely action to correct these deficiencies.

HDOTA's response to the carrier's comments provided in Attachment B stated that HDOTA believes this comment does not address any aspect of any specific project included in this PFC application package. Therefore, the state of Hawaii is unable to respond to a particular technical objection the air carrier has cited against any of the individual projects related to or as cited in, FAA PFC Order 5500.1, (dated August 9, 2001) Section 4-6 (Project Eligibility), Section 4-7 (Project Objective), or Section 4-8 (Project Justification).

The FAA notes Pacific Wings' issues appear to be compliance in nature and refer to the federal grant assurances not the PFC assurances. The FAA concurs with HDOTA's response regarding the relation of the carrier comment to project technical specificity. The FAA has determined that the HDOTA is in compliance with the PFC assurances. The FAA will not address federal grant compliance issues in this PFC Final Agency Decision. Therefore, the FAA determined that the projects met the eligibility requirements of FAA PFC Order 5500.1, Section 4-6 (Project Eligibility).

4. The public agency regulates air carrier rates, operations and services.

Pacific Wings argues the Honolulu Commuter Terminal is occupied primarily by Part 135 scheduled and on demand air carriers. With the exception of Island Air, all of the State's Part 121 inter-island carriers are located in the adjacent (and already sterile) inter-island terminal funded in part by the federal government for operation of transport category aircraft. Pacific

Wings argues that this separation of carriers results in economic hardship for those carriers, such as Pacific Wings, that are located in the commuter terminal. Additional Pacific Wings arguments are listed below:

- There is no federal law or regulation mandating that the Honolulu commuter terminal be sterile. In fact, federal rules require air carriers operating equipment with 31 through 60 seats not requiring access to sterile areas to provide security at their own expense in locations where it is not necessary, practical or cost effective for the federal government to do so. In Honolulu it is airport business practices and not the Transportation Security Administration or federal airport regulations that dictate where and how airlines requiring sterile access will be accommodated.
- The public agency's economic regulation of Part 135 air carriers is forcing Hawaii's Essential Air Service provider to levy certain taxes and fees on the traveling public, which federal law does not require it to collect. As a result, EAS passengers departing Honolulu are paying \$2.50 more per departure in federal fees and taxes than mandated by federal law. Associated overhead for the airline not only unnecessarily inflates the cost of service provided to USDOT under the EAS program, but also increases the base fare (exclusive of taxes) on all flights by an additional \$1.75 per ticket. The State is literally accommodating Island Air at the expense of its smaller competitors and their passengers.

HDOTA's response to the carrier's comments provided in Attachment B stated that HDOTA believes this comment does not address any aspect of any specific project included in this PFC application package. Therefore, the state of Hawaii is unable to respond to a particular technical objection the air carrier has cited against any of the individual projects related to or as cited in, FAA PFC Order 5500.1, (dated August 9, 2001) Section 4-6 (Project Eligibility), Section 4-7 (Project Objective), or Section 4-8 (Project Justification). This comment contains references to the commuter terminal at Honolulu International Airport and Kahului Airport; however, none of the projects included in this PFC application are located in, nor have any impact on, the commuter terminal located in Honolulu International Airport nor are any projects located at the Kahului Airport.

The FAA notes Pacific Wings' issues appear to be compliance in nature and refer to the federal grant assurances not the PFC assurances. It appears that HDOTA has attempted to make reasonable accommodations for their tenants at the HNL commuter terminal. The operations and rates as affected by the sterile requirement is part of the entire HNL security plan concurred by the Transportation Security Administration. The FAA concurs with HDOTA's response regarding the relation of the carrier comment to project technical specificity. The FAA has determined that the HDOTA is in compliance with the PFC assurances. The FAA will not address federal grant compliance issues in the PFC Final Agency Decision. Therefore, the FAA determined that the projects met the eligibility requirements of FAA PFC Order 5500.1, Section 4-6 (Project Eligibility).

5. The public agency has created unreasonable delays and frustrates access.

Pacific Wings argues the public agency does not provide timely access to essential facilities, which is important for purposes of complying with the grant assurances and ensuring that the public receives the benefit of competitive service. Pacific Wings believes the public agency has failed to act on requests to provide small air carriers with reasonable access to essential facilities at HNL.

HDOTA's response to the carrier's comments provided in Attachment B stated that this comment does not address any aspect of any specific project included in this PFC application package. Therefore, the state of Hawaii is unable to respond to a particular technical objection the air carrier has cited against any of the individual projects related to, or as cited in, FAA PFC Order 5500.1, (dated August 9, 2001) Section 4-6 (Project Eligibility), Section 4-7 (Project Objective), or Section 4-8 (Project Justification).

The FAA notes Pacific Wings' issues appear to be compliance in nature and refers to the federal grant assurances not the PFC assurances. It appears that HDOTA has attempted to make reasonable accommodations for their tenants at HNL. The FAA concurs with HDOTA's response regarding the relation of the carrier comment to project technical specificity. The FAA has determined that the HDOTA is in compliance with the PFC assurances. The FAA will not address federal grant compliance issues in the PFC Final Agency Decision. Therefore, the FAA determined that the projects met the eligibility requirements of FAA PFC Order 5500.1, Section 4-6 (Project Eligibility).

6. The public agency has conferred prohibited exclusive rights.

Pacific Wings believes the public agency has allowed one carrier (Island Air) to enjoy free terminal use at the commuter terminal; Hawaiian and Aloha Airlines share the inter-island terminal facility and are allowed overnight parking at the gates providing an economic advantage; and Aloha Airline is allowed to operate overseas flights from the inter-island terminal providing a competitive advantage. Pacific Wings argues that these arrangements result in a competitive disadvantage for its operations.

HDOTA's response to the carrier's comments provided in Attachment B stated that this comment does not address any aspect of any specific project included in this PFC application package. Therefore, the state of Hawaii is unable to respond to a particular technical objection the air carrier has cited against any of the individual projects related to, or as cited in, FAA PFC Order 5500.1, (dated August 9, 2001) Section 4-6 (Project Eligibility), Section 4-7 (Project Objective), or Section 4-8 (Project Justification).

The FAA notes Pacific Wings' objections refer to the federal grant assurances and not the PFC assurances. It appears that HDOTA has attempted to make reasonable accommodations for their tenants at HNL. The FAA concurs with HDOTA's response regarding the relation of the carrier comment to project technical specificity. The FAA has determined that the HDOTA is in compliance with the PFC assurances. The FAA will not address federal grant compliance issues in the PFC Final Agency Decision. Therefore, the FAA determined that the projects met the eligibility requirements of FAA PFC Order 5500.1, Section 4-6 (Project Eligibility).

7. The public agency discriminates among and between classes of air carriers.

Pacific Wing argues that the public agency in receipt of federal airport improvement funds must agree to operate the airport in an economically nondiscriminatory manner. The public agency must also assure that terms imposed on those who use the airport and its services, including rates and charges, are fair, reasonable, and applied without unjust discrimination, whether by the owner or tenant. Despite these clear prohibitions, Pacific Wings believes the public agency has adopted a variety of airport management practices that unjustly discriminate among and between classes of carriers. In support of its position, Pacific Wings argues that:

- a. Incumbent fees are 60 percent lower than new entrant for identical space,

- b. Some signatory carriers are excluded from participation,
- c. Airport revenue is used to pay for airline lobbyists, lawyers, consultants,
- d. Airport information is withheld from some signatory carriers,
- e. Exclusive endorsements are provided for some air carriers,
- f. Access is not provided on reasonably similar terms to all carriers,
- g. Unreasonable standards are used for small air carriers, and
- h. Dominant airlines enjoy privileges without risk.

HDOTA's response to the carrier's comments provided in Attachment B stated that this comment does not address any aspect of any specific project included in this PFC application package. This comment contains references to the commuter terminals at Honolulu International Airport and Kahului Airport; however, none of the projects included in this PFC application are located in, nor have any impact, on the commuter terminal located in Honolulu International Airport nor are any projects located at the Kahului Airport. Therefore, the state of Hawaii is unable to respond to a particular technical objection the air carrier has cited against any of the individual projects related to, or as cited in, FAA PFC Order 5500.1, (dated August 9, 2001) Section 4-6 (Project Eligibility), Section 4-7 (Project Objective), or Section 4-8 (Project Justification).

The FAA notes the issues appear to be compliance in nature and are referring to the federal grant assurances and the PFC assurances. The FAA has not made an agency determination that HDOTA is not complying with any of the federal grant assurances under the AIP nor the PFC Assurances. It appears that HDOTA has attempted to make reasonable accommodations for their tenants at HNL. The HDOTA has informed the FAA that the lease rate rental structure is undergoing revisions to update lease terms and rental fees. The FAA expects that any new rental structure will comply with any applicable provisions of the PFC program. The FAA concurs with HDOTA's response regarding the relation of the carrier comment to project technical specificity. Therefore, the FAA determined that the projects met the eligibility requirements of FAA PFC Order 5500.1, Section 4-6 (Project Eligibility).

8. The public agency has failed to maintain a schedule of charges that will make the airport as self-sustaining as possible.

Pacific Wings argues the public agency is bound by a federal grant assurance to: 1) maintain a schedule of charges for use of facilities and services that will make the airport as self-sustaining as possible under the circumstances existing at the airport; and, 2) make ongoing efforts, when entering into new or revised agreements or otherwise establishing rates, charges, and fees, to undertake reasonable efforts to make the airports as self-sustaining as possible under the circumstances. In support of its position, Pacific Wings argues that:

- a. The public agency has provided write-off's, refunds and discounts for signatory carriers,
- b. Airport revenues subsidize signatory operating expenses, and
- c. Signatory concessions top \$100 million.

HDOTA's response to the carrier's comments provided in Attachment B stated that this comment does not address any aspect of any specific project included in this PFC application package. Therefore, the state of Hawaii is unable to respond to a particular technical objection the air carrier has cited against any of the individual projects related to, or as cited in, FAA PFC Order 5500.1, (dated August 9, 2001) Section 4-6 (Project Eligibility), Section 4-7 (Project Objective), or Section 4-8 (Project Justification). This comment contains references to the commuter terminals at Honolulu International Airport and Kahului Airport; however, none of the projects

included in this PFC application are located in, nor have any impact, on the commuter terminal located in Honolulu International Airport nor are any projects located at Kahului Airport.

The FAA notes the requirement that an airport be as self-sustaining as possible is a federal grant assurance and is not a requirement of the PFC program. However, the FAA notes that HDOTA is revising the lease rate rental structure to update the terms and fee's of the lease agreement. The FAA concurs with HDOTA's response regarding the relation of the carrier comment to project technical specificity. Therefore, the FAA determined that the projects met the eligibility requirements of FAA PFC Order 5500.1, Section 4-6 (Project Eligibility).

9. The public agency unreasonably delays signatory status and withholds benefits.

Pacific Wings argues that residual agreements like the one used by the public agency grant signatory airlines certain privileges, including the right to review and defer airport capital development projects. These rights have the potential to place signatory air carriers at a significant competitive advantage over other non-signatory carriers.

HDOTA's response to the carrier's comments provided in Attachment B stated that this comment does not address any aspect of any specific project included in this PFC application package. Therefore, the state of Hawaii is unable to respond to a particular technical objection the air carrier has cited against any of the individual projects related to, or as cited in, FAA PFC Order 5500.1, (dated August 9, 2001) Section 4-6 (Project Eligibility), Section 4-7 (Project Objective), or Section 4-8 (Project Justification).

The FAA notes Pacific Wings's comments do not address any specific aspect of the PFC application but, rather are of a generalized "airport business practices" nature. Further, the FAA notes that §158.7(b) precludes any air carrier or foreign air carrier from impairing the authority of a public agency to impose or use a PFC, therefore, Pacific Wings' comments are not germane to this application.

10. The public agency does not apply reasonable fees or substantially comparable charges for aeronautical use.

Pacific Wings argues the public agency is required to charge air carriers reasonable fees for aeronautical use, 49 U.S.C. 47107. According to documents obtained by Part 135 Regulated Operator's Partnership, however, the public agency has failed, when entering into new or revised agreements and establishing rates, charges, and fees; to undertake reasonable efforts to make the airport as self-sustaining as possible.

HDOTA's response to the carrier's comments provided in Attachment B stated that this comment does not address any aspect of any specific project included in this PFC application package. Therefore, the state of Hawaii is unable to respond to a particular technical objection the air carrier has cited against any of the individual projects related to, or as cited in, FAA PFC Order 5500.1, (dated August 9, 2001) Section 4-6 (Project Eligibility), Section 4-7 (Project Objective), or Section 4-8 (Project Justification).

The FAA notes the statute cited by Pacific Wings, 49 U.S.C. 47107, does not apply to the PFC program. Furthermore, the PFC statute, 49 U.S.C. 47107, does not include a requirement that an airport be self-sustaining. The FAA has not made an agency determination that HDOTA is not complying with any of the federal grant assurances under the AIP nor the PFC Assurances. The FAA concurs with HDOTA's response regarding the relation of the carrier comment to

project technical specificity. Therefore, the FAA determined that the projects met the eligibility requirements of FAA PFC Order 5500.1, Section 4-6 (Project Eligibility).

11. The public agency adopts unjustified standards containing criteria intended to protect incumbents.

Pacific Wings believes the public agency has arbitrarily adopted certain standards which compel all aeronautical users of the Honolulu commuter terminal to conduct business in a manner identical to its sole Part 121 occupant; whether required by federal law or not. This places a regulatory burden on Part 135 air carriers that far exceeds any federal standard applicable to them. The public agency's actions also inflict unreasonable terms of use on Part 135 air carriers and economically regulate small operators who utilize the commuter terminal, by requiring substantial investments in personnel and resources necessary to comply with Part 121 standards that do not apply to them.

HDOTA's response to the carrier's comments provided in Attachment B stated that this comment does not address any aspect of any specific project included in this PFC application package. Therefore, the state of Hawaii is unable to respond to a particular technical objection the air carrier has cited against any of the individual projects related to, or as cited in, FAA PFC Order 5500.1, (dated August 9, 2001) Section 4-6 (Project Eligibility), Section 4-7 (Project Objective), or Section 4-8 (Project Justification).

The FAA notes the comments are outside the scope of the PFC program. None of the projects in this PFC application are located in the Honolulu commuter terminal.

12. The public agency diverts airport revenue.

Pacific Wings argues the airport sponsors are prohibited from diverting airport revenue. Hawaii's airport program, however, has a long history of FAA sanctions resulting from significant and chronic revenue diversions and grant assurance violations over a period of years.

HDOTA's response to the carrier's comments provided in Attachment B stated that this comment does not address any aspect of any specific project included in this PFC application package. Therefore, the state of Hawaii is unable to respond to a particular technical objection the air carrier has cited against any of the individual projects related to, or as cited in, FAA PFC Order 5500.1, (dated August 9, 2001) Section 4-6 (Project Eligibility), Section 4-7 (Project Objective), or Section 4-8 (Project Justification).

The FAA notes 49 U.S.C. 47111(e) prohibits the FAA from approving new PFC imposing authority for a public agency which is in violation of 49 U.S.C. 47107(b), use of airport revenue, as stated on page 9 of this Final Agency Decision, the FAA has found that the State is in compliance with 49 U.S.C. 47107(b) as of the date of this decision.

13. The public agency relinquishes control of airport facilities to dominant carriers for purposes of negotiating access.

Pacific Wings argues that in April 2006, the public agency, after conferring with FAA and other federal agencies, made a determination to locate a new Part 121 entrant operating 50 seat jets in the same inter-island terminal as other Part 121 jet operators. The determination was supported by analysis conducted by a national aviation-consulting firm representing Hawaii's signatory air carriers. The report prepared by AvAirPros identified the Honolulu inter-island terminal as the most desirable location for the new entrant, taking into accounts various capacity, utilization and safety issues. Two dominant incumbents strongly objected to doing business in proximity to their new competitor and lobbied a senator who chairs the state legislative transportation committee to intervene in these federal regulatory matters. After receiving communication from this legislator, the State Transportation Director advised the airports administrator to reconsider the decision, and it was subsequently reversed. The revised decision places the part 121 operator's 50-seat jets in a facility currently used by single-engine propeller aircraft as small as 9 seats; displacing scheduled Part 135 operations.

HDOTA's response to the carrier's comments provided in Attachment B stated that the \$14 million terminal development project referred to in this comment is not a development project. The scope of work for the loading bridge replacement project at HNL is specifically for the replacement of existing loading bridges at gates located in the Diamond Head and Ewa Concourses located in the overseas terminal. This project is just one phase of an on-going planned replacement of old and deteriorated loading bridges at HNL. All gates in the overseas terminal are "common use" gates, not "exclusive use" gates as described by Pacific Wings. This application does not contain any "terminal development" projects. Comments by Pacific Wings refer to the inter-island terminal and commuter terminal at HNL as well as the commuter terminal at Kahului Airport. None of the six projects in this PFC application are located in, nor have any impact on, any of the terminals mentioned by Pacific Wings.

Furthermore, with regard to the limitation of competition, it is documented that HNL is not required to prepare a "competition plan" under FAA criteria because no two airlines account for more than 50 percent of annual enplanements. A letter addressing the competition plan was sent on August 26, 2005, in response to prior inquiries by Pacific Wings on this issue. Finally, this comment does not address any issues related to the scope of the loading bridge replacement project. Therefore, the HDOTA is unable to respond to a particular technical objection the air carrier has cited against any of the individual projects related to, or as cited in, FAA PFC Order 5500.1, (dated August 9, 2001) Section 4-6 (Project Eligibility), Section 4-7 (Project Objective), or Section 4-8 (Project Justification).

The FAA notes the assignment of carriers to specific facilities is a local decision and outside the scope of the PFC program. The FAA concurs with HDOTA's response regarding the relation of the carrier comment to project technical specificity. Therefore, the FAA concluded that the projects met the eligibility requirements of FAA PFC Order 5500.1, Section 4-6 (Project Eligibility).

14. The public agency claims lack of gate availability when, in fact, gates are not fully utilized.

Pacific Wings believes the Inter-Island Terminal and its sterile Annex provide more than adequate gate, counter and ramp capacity to meet the needs of current and potential Part 121 carriers.

HDOTA's response to the carrier's comments provided in Attachment B stated this comment does not address any aspect of any specific project included in this PFC application package. Therefore, the HDOA is unable to respond to a particular technical objection the air carrier has cited against any of the individual projects related to, or as cited in, FAA PFC Order 5500.1, (dated August 9, 2001) Section 4-6 (Project Eligibility), Section 4-7 (Project Objective), or Section 4-8 (Project Justification).

This comment contains references to the commuter terminals at Honolulu International Airport and Kahului Airport; however, none of the projects included in this PFC application are located in, nor have any impact, on the inter-island or commuter terminals located in Honolulu International Airport.

Gate Assignments are a local issue and gate utilization is outside the scope of the PFC program. The FAA concurs with HDOTA's response regarding the relation of the carrier comment to project technical specificity. Therefore, the FAA determined that the projects met the eligibility requirements of FAA PFC Order 5500.1, Section 4-6 (Project Eligibility).

15. The public agency circumvents prohibition on carryover.

Pacific Wings argues the airport public agency is prohibited from entering into any lease or use agreement with an air carrier for a PFC-funded facility if the agreement contains a carryover provision.

HDOTA's response to the carrier's comments provided in Attachment B stated this comment does not address any aspect of any specific project included in this PFC application package. Therefore, the HDOTA is unable to respond to a particular technical objection the air carrier has cited against any of the individual projects related to, or as cited in, FAA PFC Order 5500.1, (dated August 9, 2001) Section 4-6 (Project Eligibility), Section 4-7 (Project Objective), or Section 4-8 (Project Justification). To date, the HDOTA has not used PFC funds for any leased facilities. None of the projects in the State's first approved application included construction of any leased facilities. There are no leased facilities financed, either in whole or in part, with revenue derived from a PFC at any of the airports within the state of Hawaii's Airport System.

The FAA concurs with Pacific Wings that Assurance 6, section B, of 14 C.F.R. Part 158, Appendix A precludes a public agency from entering into a lease agreement which contains a carryover provision for any PFC financed facility. However, as the State asserts, there are no leased PFC financed facilities in the State's airport system. Therefore, Pacific Wings comments on carryover provisions are moot.

FAA conclusion:

The issues brought forth by Pacific Wings regarding management practices, financial practices and facility uses of the state of Hawaii were presented under the allegation of possible violations to the Airport Improvement Program grant assurances, the Passenger Facility Charge Program and the Airline Deregulation Act. To date, the state of Hawaii, Airports Division, has not been found in violation of any of the assurances. There are presently no administrative or legal grounds for withholding action on this PFC application.

The information provided by the State, in its PFC application, allowed the FAA to determine that the proposed projects will enhance safety and preserve capacity at HNL. Therefore, the FAA concluded that the projects did meet the eligibility requirements of §158.15 and approved the projects. Furthermore, the FAA determined that the application, as a whole, met the requirements of Part 158, including Appendix A, Assurances, and is approving the application.

Legal Authority

This decision is made under the authority of 49 U.S.C. 46110 and 40117, as amended. This decision constitutes a final order to approve, in whole or in part, the state of Hawaii's application to impose a PFC at HNL, OGG, KOA, LIH, and ITO and use PFC revenue on six projects at HNL. Any party to this proceeding having a substantial interest may appeal the decision to the courts of appeals for the United States or the United States Court of Appeals for the District of Columbia upon petition, filed within 60 days after issuance of this decision.

ORIGINAL SIGNED BY
Mark A. McClardy

11/27/06

Concur

Manager, Airports Division
Western-Pacific Region

Date

Nonconcur

Manager, Airports Division
Western-Pacific Region

Date